

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 887
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Dental Practice Act contains provisions regarding license renewals and criminal penalties, but they are not clear or consistent. The current law requires a paper roster of approved dental labs. Current law also limits the terms of members of the Texas State Board of Dental Examiners (TSBDE) to only one term, which is inconsistent with how other licensing and regulatory boards function.

C.S.S.B. 887 authorizes TSBDE by rule to establish procedures for the alternative informal assessment of administrative penalties for violation for Subtitle D (Dentistry), Occupations Code. C.S.S.B. 887 also amends the renewal process for professionals licensed and certified by TSBDE, and includes criminal penalties for failure to comply with the Dental Practice Act. This bill also amends provisions relating to TSBDE member term limits.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Dental Examiners in SECTION 6 (Section 264.0115, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 252.002(b), Occupations Code, to delete existing text providing that a person is not eligible for appointment as a dentist or dental hygienist member of the State Board of Dental Examiners (TSBDE) if the person is a member of the faculty of a dental or dental hygiene school or of the dental or dental hygiene department of a medical school. Makes nonsubstantive changes.

SECTION 2. Amends Section 252.004(b), Occupations Code, to prohibit a member from serving more than two consecutive full terms, rather than authorizing a member to serve only one six-year term. Provides that the completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

SECTION 3. Amends Section 256.105(a), Occupations Code, to require each dentist, dental hygienist, and owner or manager of a dental laboratory licensed or registered with TSBDE to timely notify TSBDE of any change of the person's mailing address. Makes nonsubstantive changes.

SECTION 4. Amends Section 257.001, Occupations Code, by adding Subsection (d), to provide that an initial license issued under this subtitle expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

SECTION 5. Amends Section 262.054(b), Occupations Code, to prohibit a member from serving more than two consecutive full terms, rather than authorizing a member to serve only one six-year term. Provides that the completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

SECTION 6. Amends Subchapter A, Chapter 264, Occupations Code, by adding Section 264.0115, as follows:

Sec. 264.0115. ALTERNATIVE INFORMAL ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) Authorizes TSBDE by rule to establish procedures for the alternative

informal assessment of administrative penalties for violations of this subtitle that do not involve the provision of direct patient care by a person licensed or regulated under this subtitle.

(b) Authorizes a penalty assessed under this section to consist only of a monetary penalty that does not exceed \$1,000 for each violation. Prohibits the total amount of penalties assessed against a person under this section from exceeding \$3,000 in a calendar year. Requires TSBDE by rule to adopt a standardized schedule of the penalties, if TSBDE establishes penalties under this section.

(c) Provides that the assessment of a penalty under this section is not valid unless the person against whom the penalty is assessed receives a notice of violation that contains at a minimum:

(1) a clear statement of the violation, including a citation to the relevant section of this subtitle;

(2) the amount of the penalty assessed for each violation; and

(3) a statement that the person is authorized to either pay the penalty or appeal the penalty in writing.

(d) Requires TSBDE, if TSBDE establishes penalties under this section, to establish procedures for categorizing the penalties.

(e) Entitles a person who is assessed an administrative penalty under this section to a hearing under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 7. Amends Section 264.151, Occupations Code, as follows:

Sec. 264.151. New heading: CRIMINAL PENALTIES. (a) Provides that a person commits an offense if the person violates Section 256.001 (License Required), rather than this subtitle. Provides that an offense under this subsection is a felony of the third degree. Provides that each day of a violation is a separate offense.

(b) Provides that a person commits an offense if the person violates Section 256.052 (License Required). Provides that an offense under this subsection, rather than section, is a Class A misdemeanor. Provides that if it is shown at the trial of an offense under this subsection that the defendant has previously been convicted of an offense for a violation under Section 256.052, the offense is a felony of the third degree.

(c) Provides that a person commits an offense if the person violates Subchapter D (Practice by License Holder), Chapter 262 (Regulation of Dental Hygienists). Provides that an offense under this subsection is a Class A misdemeanor. Provides that each day of a violation is a separate offense. Deletes existing text providing that a violation under this section does not include a violation to which Section 262.203 (Criminal Penalty) applies.

(d) Provides that a person commits an offense if the person is a dentist or dental hygienist and violates an injunction or cease and desist order issued under Subchapter B (Dental Hygiene Advisory Committee). Provides that an offense under this subsection is a Class A misdemeanor. Provides that if it is shown at the trial of an offense under this subsection, rather than section, that the defendant was previously convicted of an offense for a violation of an injunction or cease and desist order issued under Subchapter B, rather than under this section or if the offense involves practicing without an appropriate board license, the offense is a felony of the third degree. Provides that each day of a violation is a separate offense. Makes a nonsubstantive change.

SECTION 8. Amends Section 265.005, Occupations Code, by adding Subsections (m), (n), and (o), as follows:

(m) Requires a dental assistant who holds a certificate of registration issued under this section to display the person's current certificate of registration in each office in which the person makes dental x-rays. Authorizes the person, if the person makes dental x-rays at more than one location, to display a duplicate of the original registration certificate obtained from TSBDE on payment of a duplicate certificate fee set by TSBDE.

(n) Requires a dental assistant who holds a certificate of registration issued under this section to timely notify TSBDE of any change of address of the person's place of business, any change of employers, and any change of the person's mailing address.

(o) Provides that an initial certificate of registration issued under this section expires on the 30th day after the date the certificate is issued if the holder of the certificate fails to pay the required certificate fee on or before that date.

SECTION 9. Amends Section 266.101(a), Occupations Code, to delete existing text requiring the Dental Laboratory Certification Council to provide to TSBDE a list of applicants eligible for registration.

SECTION 10. Amends Subchapter D, Chapter 266, Occupations Code, by adding Section 266.155, as follows:

Sec. 266.155. INITIAL REGISTRATION CERTIFICATE FEE. Provides that an initial registration certificate issued under this subchapter expires on the 30th day after the date the registration certificate is issued if the holder of the registration certificate fails to pay the required registration certificate fee on or before that date.

SECTION 11. Amends Section 266.303, Occupations Code, by amending Subsection (c), and adding Subsections (d) and (e), as follows:

(c) Provides that if it is shown on the trial of an offense under this section that the defendant has previously been convicted for an offense for a violation of Section 266.301(c) (relating to a requirement that a dental laboratory that prepares or repairs a dental prosthetic appliance for a dentist to provide to the dentist in writing certain registration information), rather than under this subsection, the offense is a Class A misdemeanor. Deletes existing text that provides that an offense for a violation of Section 266.301(d) (relating to a prohibition of a dentist knowingly prescribing, ordering, or receiving a dental prosthetic from or to be prepared by an unregistered dental laboratory) is a Class C misdemeanor.

(d) Provides that an offense for a violation of Section 266.301 (d) (relating to prohibiting a dentist from knowingly prescribing, ordering, or receiving a dental prosthetic appliance that is to be prepared or has been prepared by an unregistered dental laboratory) is a Class B misdemeanor. Provides that if it is shown on the trial of an offense under this section that the defendant has previously been convicted of an offense for a violation of Section 266.301(d), the offense is a Class A misdemeanor.

(e) Provides that each day of a violation is a separate offense.

SECTION 12. Repealer: Section 262.203 (Criminal Penalty), Occupations Code.

SECTION 13. (a) Provides that the changes in law made by this Act by the repeal of Section 262.203, Occupations Code, and the amendment of Sections 264.151 and 266.303, Occupations Code, apply only to an offense committed on or after the effective date of this Act. Provides that for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Makes application of this Act prospective.

SECTION 14. Makes application of Sections 257.001(d), 265.005(o), and 266.155, Occupations Code, of this Act prospective.

SECTION 15. Effective date: September 1, 2009.